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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 12, 2009

Date of Order: August 31, 2009

+OMP 651/2008

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31.08.2009

**M/s National Agricultural Cooperative
Marketing Federation of India Ltd.**

...Petitioner

Through: Mr. Anil Grover and Mr. Rahul Khurana, Advocates

Versus

M/s Virat Exports Pvt. Ltd. & Anr.

...Respondents

Through: Mr. Rahul Kodyan, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. The petitioner entered into two agreements with respondent, the first dated 20th September 2004 and the second dated 2nd February 2005, for financing agricultural commodities like Black Pepper, Pudina Ka Tel and Tulsi Oil (Basil Oil), Piperita Old, Mentha Oil, Spearmint Oil, Clove, Ajwain etc. for the purpose of export and domestic sale. Under the agreements, petitioner furnished finances to the respondent to the tune of Rs.8.64 crore. This amount was to be utilized by respondent for procurement of above mentioned commodities/ articles and to be paid back by respondent on sale/export of these commodities. Respondent failed to pay part of the amount back to the petitioner under the agreements and in order to meet this liability of unpaid amount of Rs.3.5 crore, respondent issued 7 post-dated cheques of Rs.50 lac each. However, these cheques got dishonoured. It is

stated that the amount recoverable from respondent was around Rs.4 crore inclusive of accrued interest thereon as per the agreements. Since the cheques issued by respondent, when presented got dishonoured, the petitioner informed respondent about dishonoring of the cheques and also sought to invoke the arbitration clause contained in the agreements for settlement of disputes.

3. It is submitted by counsel for respondent that since respondent had failed to discharge its liability, the petitioner has a right to sell the stocks of goods procured from the funds of petitioner by respondent and recover this amount in terms of the agreement. The petitioner also submitted that the articles /commodities involved were agricultural products and had an expiry period and are perishable in nature and if the good are not immediately disposed of in the open market, chances of their losing strength and crossing expiry limit would be more. The petitioner also sought to protect its interest by seeking security for the amount due from respondent.

4. In reply to this petition, it is submitted by counsel for respondent that an arbitrator in this matter has already been appointed and he was hearing the claims and counter-claims of the parties and thus the petition filed by petitioner was not maintainable. It is also submitted that the petitioner vide letter dated 25th March 2009 asked respondent to give their concrete proposals for settlement of the matter under one-time-settlement-policy adopted by NAFED and respondent vide their letter dated NIL had given their proposal and showed willingness in the matter and there was likelihood of the matter being settled between the parties. It is further submitted that it was the petitioner who failed to honour the terms as contained in the agreements

and the petitioner failed to release further finances of Rs.122.70 lac as agreed between the parties against stocks lying in the godown of the petitioner. The claim of the petitioner that it was to recover Rs.4 crore was also not supported by any statement of accounts or evidence. The petitioner had filed a claim before the arbitrator to the tune of Rs.4.41 crore while respondent had filed counter-claim to the tune of Rs.6,29,62,600/-. It is submitted that under the agreement dated 2nd February 2005, the petitioner had agreed to make available the finances to respondent to the tune of Rs.25 crore for purchase and stock of the mint products and spices. However, petitioner failed to provide the finances as requested by respondent with the result that respondent could not meet out its supply/ export commitments and in the meantime there was steep hike in the prices resulting into heavy losses incurred by respondent.

5. On merits, the facts as stated by petitioner about execution of agreement and advancement of money under the agreements was not denied and issuance of post-dated cheques of Rs.3.5 crore was also not denied. It was denied that the articles namely mint oil and other products had expiry limit or were of perishable nature. It was submitted that since claim and counterclaim of the parties were pending adjudication against each other, the plea of petitioner of sale of the products and securing the amount by attachment of properties should be turned down.

6. The documents filed by the parties show that the petitioner had written to the respondent about the policy adopted by the petitioner for realization of the overdue by NAFED by entering into one-time-settlement. The petitioner made it clear that one-time-settlement would mean that respondent was

prepared to pay entire balance principal amount in one go and respondent gives an undertaking of paying the entire principal amount in one go with proof of capacity of respondent to pay the amount in one go. In response to this letter, respondent wrote to the petitioner that irrespective of its counterclaim filed before the arbitrator, the respondent was prepared to take benefit of 'one time settlement policy' and was prepared to pay the entire balance amount. It is also stated by respondent that it had sufficient resources/ means to pay the entire principal amount in one go. Vide another letter dated 9th April 2009, respondent informed the petitioner that it was prepared to make the payment of principal amount within four months by means of sale receipts in equal installments and left the materials/ goods lying with the petitioner against payment proportionately made from May onwards as the mint season was going to start. It is apparent that this proposal did not seem to have gone through as we are now in August 2009 and till 12th August 2009, when the matter was heard, parties had not arrived at onetime settlement.

7. The agreement entered into between the parties would show that it was the petitioner who financed respondent for purchase of stocks of mint products like Black Pepper, Pudina Ka Tel and Tulsi Oil (Basil Oil), Piperita Old, Mentha Oil, Spearmint Oil, Clove, Ajwain etc and spices. It is specifically provided that the respondent was to purchase the raw-materials from farmers and other suppliers in the name of the petitioner and keep them at the warehouses recommended by the petitioner. The respondent was to withdraw the raw materials in small lots for processing. The respondent was to submit copies of bills of the supply, purchase-vouchers and the delivery of stocks by the petitioner to respondent was to take place against DD/Pay Orders/local

cheques clearance. From the agreement, it is obvious that the ownership over the stocks was that of the petitioner and the petitioner had financed the entire agricultural stock. Under these circumstances, I consider that the petitioner being the owner of the stock has all rights to sell the stocks and make up for the amount already invested by it for purchase of the stock. Disputes between the parties regarding claim and counterclaim would not be affected in any manner because of the sale of the stock belongs to petitioner.

8. In view of my foregoing discussion, I allow this petition under Section 9 of Arbitration & Conciliation Act, 1996, and the petitioner is given liberty to sell the stocks through open tender process or by way of auction in the open market and realize the amount and adjust the amount towards dues payable by respondent.

9. The petition stands disposed of in terms of above order.

August 31, 2009
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SHIV NARAYAN DHINGRA J.